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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 MARY HURD. BROWN,

4 Plaintiff,

5 v.

20 Civ. 2424 (JLC) (OTW)

6 NEW YORK CITY DEPARTMENT OF
7 EDUCATION,

Conference

8 Defendant.

9 -----x

New York, N.Y.
October 31, 2023
11:15 a.m.

10
11 Before:

12 HON. ONA T. WANG,

13 U.S. Magistrate Judge

14 APPEARANCES

15
16 MARY HURD BROWN, Pro Se Plaintiff

17 CORPORATION COUNSEL, LABOR AND EMPLOYMENT DIVISION
Attorney for Defendant

18 BY: ZACHARY ELLIS

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1 (Case called)

2 MS. HURD BROWN: My name is Mary Hurd Brown.

3 DEPUTY CLERK: Thank you. Counsel, your appearance.

4 MR. ELLIS: Zachary Ellis for the City.

5 DEPUTY CLERK: Thank you.

6 THE COURT: All right. We are here for a discovery
7 status conference. I have created my own agenda. And, so
8 let's take those in order and we will try to get through some
9 of the open issues. All right. So, I extended the fact
10 discovery deadline to today so that we could have this
11 conversation. I fully expect that we will extend it some
12 additional time, but I am really in a position now to try to
13 understand what else is left, how much time we realistically
14 need to get these closed out, and then I will set another fact
15 discovery deadline.

16 One of the first issues, is I believe -- I believe
17 this might have been or was supposed to have been addressed in
18 ECF89 -- is emails that refer to emails between Eric Freidman
19 and Principal Gabbard discussing the denial of the car
20 accommodation.

21 Mr. Ellis, do you want to talk to me about that?

22 MR. ELLIS: Yes, your Honor. We have finalized an
23 initial review population of 752 documents which must be
24 reviewed by myself one at a time and then sent to a third-party
25 vendor, relativity, to be ready for production. I anticipate

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1 making that production by next week for Ms. Brown.

2 THE COURT: 752 emails you said?

3 MS. HURD BROWN: They are emails and attachments to
4 emails. In total 752 unique documents.

5 THE COURT: OK. Can you, in the interest of moving
6 this along and trying to stave off additional discovery
7 disputes, review for privilege and then produce the rest? I
8 mean 752 emails is not a whole lot out of, you know,
9 considering many of the cases that I see.

10 MS. HURD BROWN: It is not, your Honor. We will get
11 that production to Ms. Hurd Brown within a week.

12 THE COURT: OK. So, you will get the production in a
13 week. All right. I will say November 10, which is a week from
14 Friday; OK?

15 MR. ELLIS: Yes, your Honor.

16 THE COURT: Ms. Brown, I think that takes care of the
17 first issue. You should expect them by November 10. The next
18 issue I see is something about the complete medical file
19 regarding a possible health crisis and Ms. Brown's presence at
20 a particular 9, 2021 3020 hearing session. What is it that you
21 are looking for? Is it your medical file with the DEO or is it
22 specific to an event?

23 MR. ELLIS: OK. Well, it is a whole bunch.

24 THE COURT: Ms. Brown, I really don't like it if you
25 go, it is a whole bunch. Let's try to talk about each issue.

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1 MS. HURD BROWN: I am going to do that because I have
2 been assisting Mr. Ellis to get my medical files because
3 evidently The Board of Ed can't seem to produce any files where
4 any of the doctors notes, letters, that should be contained in
5 those files I have not gotten one medical file with any of the
6 letters that would have been in my medical file. And that's
7 the problem.

8 THE COURT: Now, my question is, are you using this
9 to -- you need these documents to show your disability; is that
10 right?

11 MS. HURD BROWN: Yes.

12 THE COURT: All right.

13 So, let's ask Mr. Ellis, what is up with that? I
14 think, broadly, right, medical files from DEO showing, I guess,
15 DOE's knowledge of Ms. Hurd Brown's disability.

16 MR. ELLIS: Yes, your Honor. I have produced
17 Ms. Hurd Brown's full file with the DOE's office medical leaves
18 and records administration which is what we would refer to
19 colloquially as her medical file. To the extent that
20 Ms. Hurd Brown believes there are records that should have been
21 in that file but that are not, there is no other medical file
22 of hers, of which I am aware of, that the DEO would be in
23 possession of.

24 THE COURT: OK. So, Ms. Hurd Brown, I think what I am
25 hearing is that the medical file that the Department of

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1 Education keeps, right, the full medical needs and records
2 administration file that Mr. Ellis, you know, got and produced
3 to you, you believe is not complete. But what the city is
4 representing is that's what they have. Is that what the
5 dispute seems to be?

6 MS. HURD BROWN: Yes, that is what the dispute is,
7 your Honor. May I add --

8 THE COURT: Why is it and what it is that you think
9 this medical file should have that isn't in there?

10 MS. HURD BROWN: OK. There are no letters from the
11 orthopedic doctor. I think the best way I have tried to deal
12 with it to assist Mr. Ellis and the DOE to get these, as I have
13 requested that the medical records be mailed to him. But --

14 THE COURT: The medical records be mailed to whom?

15 MS. HURD BROWN: Mr. Ellis.

16 THE COURT: OK.

17 MR. ELLIS: I can have the Court --

18 THE COURT: Wait, wait. You're saying there are no
19 letters from the orthopedic doctor to your employer in the
20 medical file. Is that what you are saying?

21 MS. HURD BROWN: Yes, there is none.

22 THE COURT: And you believe that there were letters
23 that were sent?

24 MS. HURD BROWN: Yes. As a matter of fact at my
25 deposition with Mr. Ellis, and it is on record, I was able to

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1 read one of those letters from my orthopedic surgeon doctor
2 into the record because none of them appear, and we are
3 starting back from -- we actually have letters from 1995
4 listing accommodations and things like that. Also, it would
5 have been part of the Workmans' Compensation case which the
6 Board of Ed again has not produced all the records. So, what I
7 have done is I have reached out to New York Columbia
8 Presbyterian Hospital and asked them to send all of the medical
9 records that they have for the surgeries of the knee
10 replacement and the shoulder replacement. So, that should be
11 arriving to Mr. Ellis. I have also taken upon myself to reach
12 out to New York Langone to also get those operating reports for
13 him. So, that should be -- I just got an email yesterday
14 saying that should be completed. So, those are all being
15 forwarded to him. I also provided him with the HIPAA form for
16 my orthopedic doctor. He said the address was wrong, but we
17 checked that, and I sent him another one. I have also given
18 him my mental HIPAA for Upper Manhattan Health Center.

19 THE COURT: OK. Let me.

20 MS. HURD BROWN: I am trying to hip him.

21 THE COURT: What was the HIPAA release for the
22 orthopedic?

23 MS. HURD BROWN: Dr. Fernandez Madrid at 240 East
24 118th Street. Did you get the upper Manhattan?

25 THE COURT: Upper Manhattan Health Center.

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1 MS. HURD BROWN: Yes. That is the medical records,
2 the mental records. I have also sent to New York Langone
3 orthopedic hospital at 30 East 17th Street to have that file
4 sent to him.

5 THE COURT: OK. What is the New York Langone records?

6 MS. HURD BROWN: Those would be the surgeries.

7 THE COURT: Oh. You had more surgeries there?

8 MS. HURD BROWN: Yes. I have had two knee
9 replacements in 2013 and I had a shoulder replacement in 2020.
10 Those operating reports are coming to him under Dr. Madrid was
11 the surgeon.

12 THE COURT: That is in addition to the knee and
13 shoulder replacements that you reached out to Columbia
14 Presbyterian for?

15 MS. HURD BROWN: Columbia Presbyterian is the result
16 of the March 9 incident and the medical crisis that developed.
17 So, that is why those records are pertinent, because it
18 reflects my accommodations and my disability. So, that is why
19 those records are going to them as well.

20 THE COURT: OK. So, when you say so New York Columbia
21 Presbyterian medical records should really be about the
22 March 9, 2021 incident?

23 MS. HURD BROWN: That is the lead to that. That is
24 part of the whole. You have to understand, Judge,
25 accommodations were taken away from my disability.

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1 THE COURT: I know that is what you are saying your
2 case is about. I am just trying to understand what medical
3 records you are getting for which place and what they were for.

4 MS. HURD BROWN: Right.

5 THE COURT: Because when I first heard you talking, I
6 thought you said New York Columbia Presbyterian was for your
7 fee knee and shoulder replacements.

8 MS. HURD BROWN: No, I'm sorry. I misspoke.

9 THE COURT: So, Columbia Presbyterian is the March 9,
10 2021 incident and, as you put it, the medical crisis that
11 developed.

12 MS. HURD BROWN: Yes, ma'am.

13 THE COURT: Then for NYU Langone it was two knee
14 replacements in 2013 and a shoulder replacement in 2020.

15 MS. HURD BROWN: Yes, ma'am.

16 THE COURT: OK. Then you provided a HIPAA release for
17 Dr. Fernandez Madrid who did those surgeries at NYU Langone.

18 MS. HURD BROWN: Yes, ma'am.

19 THE COURT: Then you have a mental health HIPAA for
20 Upper Manhattan Health Center.

21 MS. HURD BROWN: Yes.

22 THE COURT: Are there more medical records you are
23 still trying to get?

24 MS. HURD BROWN: Well, I can only put it on record,
25 the Blanton-Peale Institute that I was under medical for

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1 mental.

2 THE COURT: Can you spell that please?

3 MS. HURD BROWN: B-L-A-N-T-O-N P-E-A-L-E Institute.

4 They are located at 7 West 30th Street, ninth floor. Now,
5 those records, from my understanding, should already be with
6 the DOE. I have evidence and, I can give a copy to Mr. Ellis,
7 from Lorene Hayes, the Board of Ed director of the medical
8 leave and record office in 65 Court Street that she requested
9 the files on November 10, 2018.

10 So, as far as I am concerned, those mental records
11 should be in their possession?

12 THE COURT: OK. So, those are the medical records.
13 That is roughly the universe of the relevant medical records.

14 MS. HURD BROWN: That is all I could assist him with.
15 Also, I gave him a HIPAA for the World Trade Center where I
16 have been diagnosed with PTSD and asthma as a result of 9-1-1.
17 That was also given to him.

18 THE COURT: That is the World Trade Center health
19 registry?

20 MS. HURD BROWN: Yes. I am a member of that.

21 THE COURT: I am a member too.

22 MS. HURD BROWN: So, I have a medical for life from
23 them because of the PTSD and the asthma that was sustained
24 during that period.

25 THE COURT: Uh-huh. OK.

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1 MS. HURD BROWN: So, he has a HIPAA also to execute
2 for that as well.

3 THE COURT: All right.

4 MS. HURD BROWN: I think that is everything I can
5 think of that would assist him.

6 THE COURT: OK. So, Mr. Ellis, did you have that list
7 before? Are there new ones in here? How long do you think it
8 might take?

9 MR. ELLIS: Yes, your Honor. I can tell you that if a
10 medical record does not appear in Ms. Hurd Brown's file with
11 the DOE medical release and records administration office nor
12 is it in any of her personnel files, I am not really certain of
13 any other DOE-kept folder or location that I could check for
14 such records. With respect to Ms. Hurd Brown's HIPAA
15 authorizations, my office, the Law Department, did attempt to
16 execute all of the HIPAA forms which she had sent to us save
17 for one, which she sent much more recently, which I will
18 execute as soon as I get back to the office. Two of those
19 HIPAA authorizations including the one for Fernandez Madrid
20 were returned as unexecuted. Madrid's because his office had
21 changed. The other with you was just returned by the post
22 office with an indecipherable notation on it. The others we
23 haven't heard back on includes the World Trade Center.

24 THE COURT: OK. What's the other one that was
25 undeliverable?

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1 MS. HURD BROWN: Off the top of my head, I don't
2 recall, your Honor.

3 THE COURT: All right. Why don't you meet and confer?
4 I am not inclined to grant any or order any additional
5 production for the DOE health file because Mr. Ellis has
6 represented he has produced what DOE has. If there is a gap
7 between what DOE has and what your medical records have, that
8 is something you can explore later and as you get closer to
9 trial. But since one of your -- one of the facts that you need
10 to establish is your disability and at the time and the times
11 of the onset of those disabilities, the medical records that
12 you have requested or HIPAA forms that you have provided should
13 get medical records that will support your dates and the
14 disabilities that you're asserting. So, what I would like to
15 do is try to give you some time for you to work with Mr. Ellis,
16 figure out what happened with Dr. Fernandez Madrid's records,
17 whether you need to execute another one with a correct address
18 on it, and then figure out which one was returned as
19 undeliverable from the post office and maybe, you know, get a
20 little clarity on the addresses. It seems like this should not
21 be something that should be terribly hard to do since you just
22 gave us all the names of the places and your latest addresses
23 on the record that you can go back and refer to the transcript
24 with Mr. Ellis and figure out, you know, if there is any that
25 need to be updated or reissued; OK?

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1 MS. HURD BROWN: OK.

2 THE COURT: Mr. Ellis, how much time do you think you
3 might need to get that done?

4 MR. ELLIS: I'm sorry, your Honor? In terms of what
5 specifically? The meet and confer? We can meet and confer
6 with Ms. Hurd Brown by the end of the week.

7 THE COURT: Right. And then either reissue or get new
8 HIPAA releases so that you have sent out HIPAA releases that
9 don't get returned unexecuted.

10 MR. ELLIS: We will send out your Honor, new HIPAA
11 authorizations just as soon as we get them from Ms. Hurd Brown.
12 But it is unpredictable as to when these medical providers, if
13 they ever will, respond to the HIPAA authorizations we send to
14 them.

15 THE COURT: OK. Ms. Hurd Brown, you wanted to say
16 something?

17 MS. HURD BROWN: Yes. What I am going to do to help
18 Mr. Ellis, I am going to reach out via email to New York
19 Langone and ask for the summary letters from Dr. Madrid. I am
20 going to see if we can ask for those independent of the
21 operating reports. So, I will take care of that because this
22 is too much, time consuming.

23 THE COURT: It sometimes does take that long. If you
24 still have a relationship or know how to contact Dr. Madrid, I
25 would suggest you reaching out that way.

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1 MR. ELLIS: Well, I have all of the letters myself
2 that they don't have. Like I said, I put one on the record
3 when I was being deposed by them. So, I have my records.

4 THE COURT: OK.

5 MS. HURD BROWN: All right. So I will take and do
6 that and try to get that sent to him. Everything else is going
7 to be sent to him.

8 THE COURT: Sounds like it.

9 MS. HURD BROWN: New York Presbyterian and New York
10 Langone.

11 THE COURT: So, what I might do is hope that you can
12 get the medical records issue close to finished by December 1
13 or at least you will have a letter on December 1 telling me
14 what you are still waiting for and where in the process that
15 is; OK?

16 MS. HURD BROWN: Your Honor, are we talking about all
17 of the upper Manhattan mental records and all of that should be
18 done?

19 THE COURT: If it is not, if we haven't gotten it by
20 December 1, at least I would like to know when you have either
21 sent the request or asked them for the records, what it, if
22 anything, they have said about when you might get them so we
23 have a better idea for setting the next dates. I am not going
24 to order that they be produced by December 1, Ms. Hurd Brown.

25 MS. HURD BROWN: I understand. But they were given to

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1 him back in September.

2 THE COURT: What was given to whom back in September?

3 MS. HURD BROWN: The HIPAAs. All of the HIPAAs were
4 sent to him, some of them as early as May, were sent to him.

5 THE COURT: I know. So, some of this is going to be
6 up to Mr. Ellis to explain by December 1 where everything is,
7 what we are still waiting for, whether you need a court to
8 order something happen, and all of that, OK?

9 MS. HURD BROWN: OK. All right. Thank you, your
10 Honor.

11 THE COURT: All right. Is that it as far as document
12 discovery? Let's ask defendants first. As far as document
13 discovery from Ms. Hurd Brown or other third parties, is that
14 sort of what is outstanding? We just covered it?

15 MR. ELLIS: There is one more document, your Honor,
16 which is the remainder of Ms. Hurd Brown's TRAC records which
17 will also be produced for her by the end of the week.

18 THE COURT: Track records you said?

19 MR. ELLIS: These are travel reimbursement -- you will
20 have to forgive me, I don't recall what the A and C stand for.
21 These are reimbursement requests and records.

22 THE COURT: So those will be produced by the end of
23 the week also?

24 MR. ELLIS: Yes, your Honor.

25 THE COURT: So, those will be produced by November 3.

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1 MS. HURD BROWN: We are talking this week?

2 MR. ELLIS: Yes.

3 THE COURT: November 3, I understood.

4 MS. HURD BROWN: OK. Thank you.

5 THE COURT: OK. All right, Ms. Hurd Brown, are there
6 other document issues outstanding for you?

7 MS. HURD BROWN: The only other issues that I have,
8 and I have supplied him with documents is the disability
9 documentation and placards from New York State, Access-A-Ride
10 and that kind of stuff so that it shows the validity of the
11 disability that has been in existence since 2014. All of that
12 was given to Mr. Ellis, and they are good up until 2027.

13 THE COURT: 2027?

14 MS. HURD BROWN: Yes. You have to be recertified for
15 each one of those entities to be able to have them, and it is a
16 process. And, I was just recently recertified in 2022.

17 THE COURT: OK. Sorry. I thought you were saying you
18 were looking for records up through 2027. OK, you have been
19 recently recertified to be entitled to those services through
20 2027?

21 MS. HURD BROWN: Yeah.

22 THE COURT: OK. All right. So as far as documents
23 and medical records I would like a letter -- let's get a status
24 letter on December 1 from Mr. Ellis. Ideally, if you can break
25 it down similarly to how we discussed it just now with naming

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1 particular HIPAA releases and providers and where we are in the
2 process of each one, that would be great.

3 Ms. Hurd Brown, I am not going to ask you to write a
4 letter on December 1 because you have provided the HIPAA
5 releases. It is kind of up to them to get that information and
6 follow up with the providers, OK? You are certainly free to
7 write a letter after December 1 if you think something is
8 inaccurate, but you don't have to write a letter.

9 MS. HURD BROWN: I understand. I would like to go on
10 record, your Honor, and state that I will try to do an outreach
11 call to all of the entities that he is having issues with and
12 see if I can assist to have it facilitated.

13 THE COURT: That would be helpful.

14 MS. HURD BROWN: I am trying to help Mr. Ellis.

15 THE COURT: Let's talk about depositions.
16 Ms. Hurd Brown has been deposed. So, are there other
17 depositions that is defendants intend to take other than
18 Ms. Hurd Brown's?

19 MR. ELLIS: No, your Honor.

20 THE COURT: OK. And Ms. Hurd Brown, I understand you
21 have two more depositions you'd like to take, or more than
22 that?

23 MS. HURD BROWN: No, I have more than that, your
24 Honor. Mr. Ellis is taking -- I don't know what is the word
25 for it, but he has sort of objected to some of the people I

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1 would like to depose.

2 THE COURT: Why don't we start with the easiest and
3 then go to the harder ones; OK? So, Principal Gabbard is no
4 longer of this world, so you are not going to take his
5 deposition. OK, what is the next easiest? Is there anything
6 that the defendants are not disagreeing with? Who else is on
7 your list? Eric Freidman, right?

8 MS. HURD BROWN: Yes, Mr. Freidman.

9 THE COURT: OK. No dispute on that, right?

10 MS. HURD BROWN: No.

11 THE COURT: No dispute on deposing him.

12 MS. HURD BROWN: Well, except I think in his letter of
13 ECF 100, Mr. Ellis wants me to refrain from asking about
14 anything regarding the 3020a with Mr. Freidman if I am not
15 mistaken. That is in his letter.

16 THE COURT: OK. Let's get the names out and figure
17 out who you agree can be deposed before we start fighting about
18 what you can ask, OK? No dispute on deposing Eric Freidman and
19 also no dispute on deposing John Garcia, right?

20 MS. HURD BROWN: No.

21 THE COURT: OK. What about Ms. Abnorma Lisa and
22 Ms. Hanes?

23 It says they are no longer employed by DOE. How badly
24 do you need them, Ms. Hurd Brown?

25 MS. HURD BROWN: I would say very strongly because

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1 that is when my accommodation and everything was thrown out the
2 window. I guess with Ms. Abnorma Lisa as the director of
3 Affinity, all of my accommodations for my disability were
4 thrown out. I would like to find out why and how that
5 materialized because the impact was very substantial. So, I
6 would like to depose her. I do have her address and subpoena
7 her and serve her. I have already tracked down her address.

8 THE COURT: OK. Is there any issue here, Mr. Ellis,
9 on whether Ms. Abnorma Lisa was, in fact, the person who took
10 away the car accommodation. Is the only objection to Abnorma
11 Lisa and Hanes depositions they are to longer employed by DEO?

12 MR. ELLIS: No, your Honor. We have a couple of
13 additional objections, one of which is relevance.

14 I understand that Alexandra was the director of the
15 affinity schools network, but that doesn't mean she was
16 personally involved in any attendance teachers car-like
17 accommodation related requests. That would be, in this case,
18 Eric Freidman, who was Ms. Hurd Brown's immediate supervisor
19 during the relevant time period and potentially John Garcia who
20 is a financial director.

21 Additionally with respect to Alexandra, Ms. Hurd Brown
22 had indicated during a meet and confer that she wanted to
23 depose this individual as to conversations that she may have
24 had with DOE attorneys that led to the commencement of state
25 disciplinary proceedings against Ms. Hurd Brown which would not

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1 only be protected by attorney client privilege, but such
2 testimony would violate the Younger abstention doctrine. With
3 respect to Ms. Haze, she was, as I understand it, the director
4 of the DOE's medical leaves and record administration office.
5 Again, in that capacity, she would not be expected to be
6 personally involved in any individual accommodation request nor
7 are there any documents that we have produced or allegations in
8 the complaint that would show this individual's personal
9 involvement in this specific issue remaining in this case which
10 the alleged denial of a car-accommodation request.

11 THE COURT: All right. Ms. Hurd Brown, why don't you
12 take Freidman's and Garcia's depositions first. I am not
13 hearing that Ms. Abnorma Lisa or Ms. Hanes were directly
14 involved in the remaining claim here which is the taking away
15 of the car, OK?

16 MS. HURD BROWN: OK. But, your Honor, the
17 accommodations, the car, was contractually authorized which is,
18 in itself, OK. But you also had stair climbing, limited
19 mobility, I had early morning hours, it was a second-floor
20 office. So, those accommodations were in through the medical
21 office accommodations. So, Mr. Ellis is limiting everything
22 to, oh, just the car. The car was the final straw of all of
23 the accommodations. So, to say that Ms. Anna Lisa.

24 THE COURT: No, no. We have been through two reports
25 and recommendations on motions to dismiss. As far as I

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1 understand it, the only remaining claim in this case is about
2 the car accommodation being taken away; OK? And so, when you
3 are in discovery now, it is going to be about who made that
4 decision that it should be taken away. And what I am hearing
5 from Mr. Ellis is that neither Ms. Abnorma Lisa nor Ms. Hanes
6 were involved in any accommodation request or decisions in the
7 alleged denial of the car accommodation. And Mr. Ellis also
8 said that the likeliest people to have been directly involved
9 and to have personal knowledge of the accommodation request and
10 the denial or the removal of the car accommodation would be
11 Mr. Freidman and potentially Mr. Garcia. So, all I was saying
12 was I was suggesting that you not make any moves to try to
13 depose Ms. Abnorma Lisa or Ms. Hanes until after you completed
14 the depositions of Mr. Freidman and of Mr. Garcia.

15 MS. HURD BROWN: May I?

16 THE COURT: Yes.

17 MS. HURD BROWN: Mr. Ellis's objection is wrong
18 because this is a contractual authorization under my contract
19 as an attendance teacher and that cannot be made by a
20 supervisor. And that's what Mr. Freidman is. Mr. Freidman was
21 a supervisor that I only saw maybe once a month. So, he is not
22 the one that could authorize such a removal of accommodation.
23 It has to go up higher, either to a superintendent or someone
24 above that. It cannot be made by a supervisor to break a
25 contract. The Board of Ed is not structured that way in the

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1 hierarchy of their structure. So, if it's not Ms. Abnorma
2 Lisa, then I guess we will go with the superintendent.

3 THE COURT: Maybe you could serve an interrogatory
4 asking that question and that might actually get you some names
5 and appropriate names of somebody who depose if you don't think
6 it is Freidman or Garcia. Why don't you consider serving an
7 interrogatory, if you haven't already, about who made these
8 decisions?

9 And look, Ms. Hurd Brown, I understand you are
10 frustrated. But some of what you are saying right now is
11 something that will go to the trier of fact, all right? You
12 are saying that the car accommodation was something that was
13 authorized in your contract. Do you have a written contract
14 that says that? That is part of your proof, part of what you
15 would need to prove before you get to the next step of it being
16 taken away.

17 All right. So, that is where I am with Freidman and
18 Garcia first. I am going to suggest that you serve some
19 written requests to the defendants about the identities of the
20 people who made any of these decisions in a way that better
21 narrows and streamlines who should be deposed.

22 I am not going to allow to you depose Ms. Abnorma Lisa
23 and Ms. Hanes at this time. I have already asked to you wait
24 until after you have deposed Mr. Freidman and Mr. Garcia.

25 MS. HURD BROWN: All right, your Honor. Thank you.

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1 THE COURT: I don't want to have to order that yet.
2 But, you know, if you get information during those depositions
3 that further supports your ability or the reasoning to depose
4 Ms. Abnorma Lisa and Ms. Hanes, I will entertain it then. The
5 first thing I have heard -- again, I am trying to get you
6 through discovery so that you can get to a resolution on the
7 merits. And what I heard from Mr. Ellis is that Mr. Freidman
8 and Mr. Garcia, whom they don't contest, are likely to have the
9 most information from them about that. So, get the most
10 information you can from Mr. Freidman and Mr. Garcia and then
11 we will decide later on Abnorma Lisa and Hanes.

12 All right. What about Beth Norton? Are you still
13 seeking the deposition of Beth Norton?

14 MS. HURD BROWN: She is UFT. I'm entertaining that.
15 So, I guess I would have to depose her for the attendance
16 teacher contract since that is what we are going to have to
17 use.

18 THE COURT: I am going to caution you very strongly
19 not to because if she is a lawyer, and she's the lawyer of your
20 union, she may not be able to talk about a lot of things
21 because they are going to be either privileged or work product.

22 MS. HURD BROWN: All right. Thank you, your Honor.

23 THE COURT: Think about that.

24 MS. HURD BROWN: OK.

25 THE COURT: What about human resources director/case

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1 manager?

2 MS. HURD BROWN: I don't have a name. So, we can
3 eliminate that.

4 THE COURT: OK. You know, it may also come to be that
5 you hear things in the deposition of Mr. Freidman and
6 Mr. Garcia that give you more information about whether there
7 is another person who you haven't found yet or whose identity
8 you don't know yet who might be worth a deposition, OK?

9 Then what about John Woods?

10 MS. HURD BROWN: He is the arbitrator on the 3020a. I
11 am going to leave that open because I don't know where that
12 case is going at this point.

13 THE COURT: I am also going to suggest to you that you
14 not only leave it open but not pursue that deposition. You
15 can't depose someone who is presiding over a parallel state
16 proceeding in the federal courts. And it's probably not
17 technically relevant here.

18 All right. Then anybody else? I see on the list
19 Dr. Naughton and Chancellor Banks and Superintendent Walsh.

20 MS. HURD BROWN: Dr. Naughton, yes. I don't even know
21 who this is, and I need to depose him. There are no notes, no
22 medical notes, no summary of his decisions on my accommodations
23 or anything.

24 THE COURT: So, who is he then?

25 MS. HURD BROWN: All I know is he worked for the Board

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1 of Ed, so Mr. Ellis has informed me. First time I have seen
2 that name. So, I have no idea. But yes, he did make a ruling
3 on the sabbatical medical. He denied the medical sabbatical.
4 That is the first time I have seen his name.

5 THE COURT: So why do you want to depose him?

6 MS. HURD BROWN: The medical sabbatical that was
7 requested was also part of my knee accommodation, and my
8 knee -- my car was taken away and I was any a medical crisis at
9 that point and tried to get the sabbatical. So, I want to find
10 out how he arrived at his decision and was my accommodation and
11 disability taken into consideration when he made that decision?
12 So, I need to know those questions. Those questions need to be
13 asked and answered.

14 THE COURT: Mr. Ellis, can you shed any light?

15 MR. ELLIS: Perhaps a little, your Honor. I can
16 confirm Dr. James Naughton is a DOE employee and that he is
17 still currently employed by the DOE. I understand that his
18 name appears in Ms. Hurd Brown's file with the DEO medical
19 leaves and records administration office, and that he was
20 involved in the denial of a medical sabbatical requested by
21 Ms. Herd Brown. So, I would not say that he was the one who
22 denied it. I don't think DOE doctors actually grant or deny
23 accommodation so much as they might evaluate someone as part of
24 a physical. That hadn't been said. That denied medical
25 sabbatical is not a part of the claim which is for the denial

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1 of her request to use a personal car to make home visits. Nor
2 is there any indication that Dr. James Naught, besides
3 evaluating Ms. Hurd Brown's medical condition was personally
4 involved in this case and should be subjected to a deposition
5 here.

6 THE COURT: So, then who was part of the decision
7 making in Ms. Hurd Brown's claim here? She is saying it can't
8 have been Mr. Freidman or Mr. Garcia because supervisors are
9 not the ones that get to make those decisions.

10 MR. ELLIS: We would dispute that, your Honor. It is
11 my understanding it was, in fact, Eric Freidman who denied
12 Ms. Hurd Brown's -- and it is a bit complicated because some of
13 her requests for a personal car were granted. Others were
14 denied for specific reasons. All TRAC requests for attendance
15 teachers in Ms. Hurd Brown school network, I do believe would
16 have gone to Eric Freidman as the attending supervisor of that
17 network. And then once approved, they would have been sent to
18 John Garcia, the financial director who would have processed
19 the reimbursement. Certainly, if, Eric Freidman or John
20 Garcia, at their depositions, testify otherwise and identify
21 other individuals, we would certainly reevaluate our position
22 as to the permissibility of Ms. Hurd Brown taking and deposing
23 other DOE employees here.

24 THE COURT: OK. The other thing you might want to
25 consider is whether Ms. Freidman or Mr. Garcia or somebody else

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1 might be prepared to testify about the processes generally, not
2 just what happened with Ms. Hurd Brown, but a little bit about
3 what Ms. Hurd Brown is saying about how she believes that the
4 ability to use the car was in the contract and that is somehow
5 taken away and whether and how those decisions get made.

6 Now, I understand there is a lot of daylight between
7 what Ms. Hurd Brown was asserting and what may have -- what the
8 DOE may or may not have done or may have been able to do. But
9 my suggestion is if we don't want to get stuck litigating every
10 single individual Ms. Hurd Brown wants to depose, try to find a
11 way to get her the information in some useable form through
12 depositions with deponents that you are willing to provide in
13 the first instance, of course, if they have the knowledge. The
14 other alternative might be after Mr. Freidman and Mr. Garcia's
15 depositions are completed, we may need to dig in a little bit
16 to see if there are discreet issues that might be amenable to
17 something like a 30(b)(6) deposition; OK?

18 Ms. Hurd Brown, you are making that face. 30(b)(6) is
19 Federal Rule of Civil Procedure 30(b)(6). Which talks about
20 depositions of entities or organizations. So, it might not be
21 that there is one person that knows the answer to a particular
22 question. But if you have particular questions or topics, then
23 you may be able to get a deposition of a witness who has been
24 prepared to answer that question even though that is not what
25 they normally do as their job. OK.

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1 The other thing you could do is you could maybe try to
2 an interrogatory or something like that. I would ask you to
3 hold off on that until you see what you get from Mr. Freidman
4 and Mr. Garcia so that any discovery request you serve after
5 that are really to plug in holes, not going over the same
6 ground you would go over with Mr. Freidman and Mr. Garcia, OK?

7 MS. HURD BROWN: You are saying Dr. Naughton should be
8 held off?

9 THE COURT: Held off, yes.

10 We need to wind up for the court reporter's sake.

11 So, the other names in ECF 100, I am also going to ask
12 you, Ms. Hurd Brown, to hold off on. I think you have to take
13 some time after you get the transcript to review and I think
14 you will see what I am trying to get done here, OK?

15 MS. HURD BROWN: Your Honor, Mr. Ellis, just now, the
16 DOE commonly states -- he is talking about a track for
17 reimbursement that has nothing to do with the car usage. A car
18 usage is independent -- wait a minute, let me finish.

19 THE COURT: No, no. You can't because the court
20 reporter needs to leave. And if the court reporter leaves, we
21 won't have a transcript.

22 MS. HURD BROWN: OK.

23 THE COURT: So this is something -- you have a lot to
24 do. You have depositions to do. You know, Mr. Ellis has a lot
25 of homework also. I am going to get a status letter December 1

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1 on the status of the medical records. Hopefully by then you
2 will have some sense of when you would be deposing Mr. Freidman
3 and Mr. Garcia.

4 MS. HURD BROWN: As soon as possible.

5 THE COURT: Then, after that, I will see what you have
6 to say. If you want to respond to that letter, you are free to
7 do so. And then we will probably set another status
8 conference.

9 MS. HURD BROWN: Do I have to go with the guidelines
10 he stated in his letter ECF 100?

11 THE COURT: What do you mean the guidelines he stated
12 in the letter?

13 MS. HURD BROWN: OK. If it is not on the record, then
14 I won't bother.

15 THE COURT: I don't understand what you are saying
16 about things being on record or not. ECF 100 is a letter that
17 is filed on the docket. There is something in there, you are
18 saying about guidelines. I don't understand what you mean
19 because I give the guidelines, not your opponent.

20 MS. HURD BROWN: OK.

21 THE COURT: Oh, you mean about not asking questions
22 about the 3020?

23 MS. HURD BROWN: Yes.

24 THE COURT: Correct. That protective order is
25 granted.

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1 All right. Thank you very much. We are adjourned. I
2 am going to ask Mr. Ellis to order a copy of the transcript,
3 provide a copy to Ms. Hurd Brown. Thank you.

4 MS. HURD BROWN: Thank you, your Honor.

5 (Adjourned)
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